

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC JERMAINE HARVEY,

Plaintiff,

Case No. 1:20-cv-517

v.

HONORABLE PAUL L. MALONEY

M. DEPKY, et al.,

Defendants.

/

ORDER ADOPTING REPORT AND RECOMMENDATION

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant Ward filed a motion for summary judgment (ECF No. 17). Defendant Depky also filed a motion for summary judgment (ECF No. 31). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation on October 8, 2021, recommending that this Court grant the motion filed by Ward and that the motion filed by Depky be granted in part and denied in part. The Report and Recommendation was duly served on the parties. No objections have been filed. *See* 28 U.S.C. § 636(b)(1). Therefore,

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 36) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Ward's Motion for Summary Judgment (ECF No. 17) is GRANTED. Plaintiff's remaining claims against Ward are DISMISSED for failure to properly exhaust administrative remedies.

IT IS FURTHER ORDERED that Defendant M. Depky's Motion for Summary Judgment (ECF No. 31) is GRANTED IN PART AND DENIED IN PART. Plaintiff's claim that Depky threatened to charge Plaintiff with a misconduct violation is DISMISSED for failure to exhaust administrative remedies. Plaintiff's claim that Depky confiscated his bottle of seasoning is DISMISSED for failure to state a claim.

IT IS FURTHER ORDERED that for the same reasons the Court concludes that Plaintiff's claims are properly dismissed, the Court also concludes that any issue Plaintiff might raise on appeal would be frivolous. *Coppedge V. United States*, 369 U.S. 438, 445 (1962). Accordingly, the Court certifies that an appeal would not be taken in good faith.

A Judgment will be entered consistent with this Order.

Dated: November 12, 2021

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge